



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-0827

RIN 1625-AA00

Safety Zone, Delaware River; Wilmington, DE

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone during the dredging of Cherry Island Range Deepwater Point Anchorage No. 6 in the Delaware River. Norfolk Construction and the Dredge ESSEX have been contracted by the Army Corps of Engineers for maintenance dredging of a portion of the Delaware River. Submerged pipeline will be present in the northern half of Deepwater Anchorage No. 6 to facilitate the project.

This regulation is necessary to provide for the safety of life on the navigable waters of the Delaware River. This safety zone is intended to restrict vessel traffic movement to protect mariners from the hazards associated with the presence of the submerged pipeline in the anchorage.

DATES: This rule is effective as to persons with actual notice from 5 a.m. on September 10, 2013, until 11 p.m. on October 15, 2013. In compliance with 5 U.S.C. 552(a)(1), this rule is effective without actual notice from the date it is published in the Federal Register, [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.], until 11 p.m. on October 15, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0827]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Veronica Smith, Chief Waterways Management, Sector Delaware Bay, U.S. Coast Guard; telephone (215)271-4851, email [veronica.l.smith@uscg.mil](mailto:veronica.l.smith@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202)366-9826.

## SUPPLEMENTARY INFORMATION:

### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. Immediate action is necessary to provide for the safety of life and property in the navigable water. Publishing an NPRM is impracticable given that the final details for this event were not received by the Coast Guard until August 28, 2013. Vessels transiting or attempting to transit the northern half of Deepwater Point Anchorage No. 6 during pipe-laying or dredging operations may be at risk. Delaying this rule

to wait for a notice and comment period to run would be contrary to the public interest as it would inhibit the Coast Guard's ability to protect the public from the hazards associated with pipe-laying and dredging operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Any delay encountered in this regulation's effective date would be contrary to the public interest because immediate action is needed to provide for the safety of life and property from the hazards associated with pipe-laying operations.

#### B. Basis and Purpose

The Army Corps of Engineers has hired Norfolk Dredging Company to conduct maintenance dredging in the Delaware River main channel. Norfolk Dredging Company will be placing submerged pipeline in the northern half of Deepwater Point Anchorage with the Dredge Essex to facilitate this project. This regulation is necessary because there will be pipe-laying and dredging operations conducted in the anchorage and navigable channel. The purpose of the rule is to protect mariners and spectators in the area from the potential hazards associated with pipe-laying and dredging operations. The Captain of the Port is establishing this safety zone to ensure the safety of life and property of all mariners and vessels transiting the local area.

### C. Discussion of the Final Rule

To mitigate the risks associated with the pipe-laying and dredging operations, the Captain of the Port, Sector Delaware Bay will enforce a safety zone while submerged pipeline is present through the duration of the dredging operations in Cherry Island Range. The safety zone will encompass all waters of Deepwater Anchorage No. 6, Delaware River, Wilmington, DE from the northeast corner of the anchorage at position 39°42.675' N, 075°29.872' W to the northwest corner of Anchorage No. 6, next to the channel at position 39°42.842' N, 075°30.386' W, south along the eastern channel boundary to position 39°42.214' N, 075°30.619' W, east to position 39°42.223' N, 075°30.287' W, then north to the first position. The safety zone will be in effect for an estimated 36 day period from September 10, 2013, from 5:00 a.m. until October 15, 2013 at 11:00 p.m. unless cancelled earlier by the Captain of the Port. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Delaware Bay, or her on-scene representative. The Captain of the Port, Sector Delaware Bay, or her on-scene representative may be contacted via VHF channel 16.

### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

## 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this regulation will restrict vessel traffic from operating within the safety zone on the navigable waters of Deepwater Point Anchorage No.6, Delaware River, Wilmington, DE, the effect of this regulation will not be significant due to the limited duration of the safety zone and the availability of other nearby anchorages. The safety zone will be enforced in an area and in a manner that does conflict with transiting commercial and recreational traffic. The Coast Guard does not anticipate any significant economic impact because the safety zone will only be enforced in the upper half of the anchorage for a limited period of time. Furthermore, during the enforcement period, vessels may request permission to transit through the safety zone; permission may be granted by the on-scene Coast Guard vessel on a case-by-case basis.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities:

(1) This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate, transit, or anchor in a portion of Deepwater Point Anchorage No. 6 from September 10, 2013 until October 15, 2013 unless cancelled earlier by the Captain of the Port.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will only be enforced for a short period of time. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port, Sector Delaware Bay, to transit through the safety zone. Before activation of the zone, we will give notice to the public via a Broadcast Notice to Mariners that the

regulation is in effect.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

## 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

## 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

## 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

## 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR Part 165, applicable to safety zones on the navigable waterways. This zone will temporarily restrict vessel traffic from transiting through Deepwater Point Anchorage No. 6 in order to protect the safety of life and property on the waters while submerged dredge pipe-laying and dredging operations are conducted. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a

significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. Add § 165.T05-0827, to read as follows:

§ 165.T05-0827 Safety Zone, Submerged Dredge Pipeline and Dredging, Deepwater Point Anchorage No. 6; Delaware River, Wilmington, DE.

(a) Regulated Area. The following area is a safety zone: The safety zone will encompass all waters of Deepwater Anchorage No. 6, Delaware River, Wilmington, DE from the northeast corner of the anchorage at position 39°42.675' N, 075°29.872' W to the northwest corner of Anchorage No. 6, next to the channel at position 39°42.842' N, 075°30.386' W, south along the eastern channel boundary to position 39°42.214' N, 075°30.619' W, east to position 39°42.223' N, 075°30.287' W, then north to the first

position.

(b) Regulations. The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this section § 165.T05-0827.

(1) All persons and vessels are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port or her designated representative.

(2) All persons or vessels wishing to transit through the Safety Zone must request authorization to do so from the Captain of the Port or her designated representative aboard the on-scene Coast Guard vessel one hour prior to the intended time of transit.

(3) Vessels granted permission to transit through the Safety Zone must do so in accordance with the directions provided by the Captain of the Port or her designated representative to the vessel.

(4) To seek permission to transit this safety zone, the Captain of the Port or her designated representative can be contacted via Sector Delaware Bay Command Center (215) 271-4940.

(5) This section applies to all vessels wishing to transit through the safety zone except vessels that are engaged in the following operations:

- (i) Enforcing laws;
- (ii) Servicing aids to navigation, and

(iii) Emergency response vessels.

(6) No person or vessel may enter or remain in a safety zone without the permission of the Captain of the Port;

(7) Each person and vessel in a safety zone shall obey any direction or order of the Captain of the Port;

(8) No person may board, or take or place any article or thing on board, any vessel in a safety zone without the permission of the Captain of the Port; and

(9) No person may take or place any article or thing upon any waterfront facility in a safety zone without the permission of the Captain of the Port.

(c) Definitions.

(1) Captain of the Port means the Commander, Coast Guard Sector Delaware Bay, or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on her behalf.

(2) Designated representative means any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port Delaware Bay to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) Enforcement. The U.S. Coast Guard may be assisted by Federal, State, and local agencies in the patrol and enforcement of the zone.

(e) Enforcement period. This section will be enforced for a 36 day period from September 10, 2013, at 5:00 a.m. until October 15, 2013 at 11:00 p.m. unless cancelled earlier by the Captain of the Port.

Dated: September 6, 2013.

BENJAMIN A. COOPER  
Captain, U.S. Coast Guard  
Alternate Captain of the Port, Delaware Bay

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Date: 09/30/2013]